

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	Case No. 10 C 06139
Plaintiff,)	
)	
and)	
)	Judge John Z. Lee
REGINALD BAILEY, <i>et al</i> ,)	
)	
Intervening-Plaintiffs)	
)	
v.)	
)	
DHL EXPRESS (USA), INC.,)	
)	
Defendant.)	

**DHL’S MOTION TO STRIKE
THE NEW EXPERT REPORT OF DR. THOMAS DIPRETE**

Defendant DHL Express, Inc. (“DHL”), pursuant to Fed. R. Civ. P. 26 and 37, moves to strike the new expert report of Dr. Thomas A. DiPrete, an expert designated by The Equal Employment Opportunity Commission (“EEOC”) and third-party Plaintiff-Intervenors (collectively “Plaintiffs”). In support of this Motions, DHL states as follows:

1. The Court ordered all affirmative expert reports to be submitted by June 22, 2015, and ordered any rebuttal reports be submitted by August 20, 2015. (ECF No. 205.) The Court’s scheduling order did not permit the EEOC to reply to DHL’s rebuttal expert, nor did the EEOC request an opportunity to reply to DHL’s rebuttal expert. (Id.; see also ECF No. 191 (Joint Agreed Discovery Plan).)
2. The EEOC submitted DiPrete’s expert report on June 19, 2015. In his report, DiPrete used a standard regression analysis to investigate the extent to which certain

neighborhood characteristics of driver routes are associated, on average, with the race of the driver. DiPrete's report did not make any analysis or conclusions regarding whether any individual driver (claimant or non-claimant) was disadvantaged in their particular route assignments, and did not opine on any standard or benchmark of characteristics that made an area "dangerous." The EEOC has conceded that DiPrete's report is insufficient to meet its burden to establish that each claimant suffered a materially adverse employment action in their route assignment.

3. In its motion for summary judgment, DHL has argued that the EEOC lacks the evidence necessary to meet its burden to establish that each claimant suffered a materially adverse employment action in their route assignment. The EEOC has conceded that DiPrete's report does not establish that any claimant suffered a materially adverse employment action.

4. Now, in support of the EEOC's opposition to DHL's motion for summary judgment, DiPrete has conducted a completely new analyses of race and crime data on a claimant-by-claimant and delivery stop-by-stop basis analyses. In his new analyses, DiPrete performed new calculations with a new computer program and set a new benchmark for dangerousness based on average property and violent crime in order to opine and conclude that 57 of 83 individual claimants were assigned to work in dangerous locations.

5. DiPrete's new declaration should be excluded because:

- a) It plainly offers new conclusions and opinions based on new analyses and calculations, all which were required to be disclosed two years ago, well before DHL's rebuttal expert prepared his report and well before DHL filed its comprehensive motion for summary judgment;
- b) There are no new facts or data that could possibly justify the late disclosure of the new expert testimony-- the new declaration is based entirely on data produced some five years ago; and
- c) DHL is substantially prejudiced by the untimely submission of this new expert opinion, an opinion that is clearly made in response to DHL's

summary judgment arguments, and deprives DHL the opportunity to cross examine DiPrete, or to test or rebut his new calculations and analyses.

WHEREFORE, for these reasons more fully set forth in DHL's Memorandum of Law in Support of this Motion (filed concurrently herewith), DHL respectfully requests that the Court grant DHL's motion to strike the expert report and testimony of Dr. DiPrete.

DATED: June 15, 2017

Respectfully submitted,
DHL EXPRESS (USA), INC.

By: s/ Kyle R. Hartman
One of Its Attorneys

Camille A. Olson
Richard B. Lapp
Davis Ross
Seyfarth Shaw LLP
233 South Wacker Drive, Suite 8000
Chicago, Illinois 60606
(312) 460-5000
(312) 460-7000 (fax)

CERTIFICATE OF SERVICE

I certify that on this date I caused a copy of the foregoing **DHL'S MOTION TO STRIKE THE NEW EXPERT REPORT OF DR. THOMAS DIPRETE** to be served upon the following counsel of record by the Court's Electronic Filing System, which would then electronically notify the following CM/ECF participants on this case:

Laurie Elkin
Brad Fiorito
Equal Employment Opportunity Commission
500 West Madison Street, Room 2000
Chicago, IL 60661

Lee D Winston
Winston Cooks, LLC
2 North 20th Street
Suite 1330
Birmingham, AL 35205
(205) 502-0940

Leonard C. Goodman
Melissa Ann Matuzak
Len Goodman Law Office LLC
53 W. Jackson Blvd.
Suite 1650
Chicago, IL 60604
lcgoodman@rcn.com
melissamatuzak@gmail.com

Dated: June 15, 2017

s/Kyle R. Hartman